

BOARD OF ZONING APPEAL FOR THE  
CITY OF CAMBRIDGE GENERAL HEARING

December 17, 2009

7:00 p.m.

in

Senior Center

806 Massachusetts Avenue

Cambridge, Massachusetts 02139

Constantine Alexander, Chair

Tim Hughes, Acting Chair

Brendan Sullivan, Member

Tad Heuer, Member

Mahmood Firouzbakht, Member

Slater Anderson, Member

Thomas Scott, Member

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## P R O C E E D I N G S

(7:00 p.m.)

(Sitting Members: Constantine Alexander, Brendan Sullivan, Mahmood Firouzbakht, Slater Anderson, Tad Heuer.)

CONSTANTINE ALEXANDER: The Chair will call to order the meeting of the Board of Zoning Appeals. And is our custom, we'll start with the continued cases.

Our case No. 9563 and 9651 both involving 12 Shady Hill Square. Is there anyone here wishing to be heard on that matter?

(No response.)

CONSTANTINE ALEXANDER: The Chair notes no one here wishes to be heard. There's a letter in the file for one of these cases. It's not signed.

SEAN O'GRADY: Sorry, there should be -- there's the original right there.

CONSTANTINE ALEXANDER: Thank you.

There is still a letter in the file addressed to the Inspectional Services Department on the letterhead of Rackemann, Sawyer and Brewster, a law firm. Signed by Eric Wondlinger, W-o-n-d-l-i-n-g-e-r. On behalf of the petitioner in the above entitled matter and by agreement with Christian Habersaat, H-a-b-e-r-s-a-a-t, Esquire, representing Stonehouse, LLC, I hereby request a continuance of the above matter now scheduled for Thursday, December 17, 2009 to allow the completion and implementation of a settlement agreement between the parties, certain title matters, a number of parties involved, and the involvement of the city and the finalization of a historic facade preservation restriction for all of the houses on Shady Hill Square will require more time to sort through. I understand that the next available hearing dates may be in April or May 2010. Either of those will be

satisfactory to the parties.

I assume we can do it earlier?

SEAN O'GRADY: We can do it a little earlier than that. The farthest scheduled that would have is March 25th. So if we wanted to do that.

CONSTANTINE ALEXANDER: Why not March 25th? These are both a case not heard?

SEAN O'GRADY: That's right.

CONSTANTINE ALEXANDER: That's correct.

So the Chair moves that these two cases identified earlier be continued until seven p.m. on March 25th on the condition that the petitioners be notified that they must continue to maintain their signs on the property, and that the signs should reflect the now new hearing date.

All those in favor, please say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in

favor. The case is continued.

(Alexander, Sullivan, Firouzbakht,  
Anderson, Heuer.)

(Discussion off the record.)

(7:00 p.m.)

(Sitting Members: Constantine Alexander, Tim Hughes, Brendan Sullivan, Thomas Scott, Tad Heuer.)

CONSTANTINE ALEXANDER: The Chair will call 9853, 20 Sidney Street.

Is there anyone here wishing to be heard on that matter?

I think we've seen you before. You still have to give your name and address and all that.

ATTORNEY ADAM BRAILLARD: Thank you, Mr. Chairman, Members of the Board. For the record, my name is Adam Braillard with Prince, Lobel, Glovsky and Tye. We're located at 100 Cambridge Street in Boston, Massachusetts. I'm here on behalf of the applicant, Clear Wireless, LLC. It's an affiliate of Sprint -- Sprint Nextel. I'm here in connection with a modification or a Special Permit to modify an existing wireless

facility on the rooftop of the existing building located at 20 Sidney Street.

The Board back in 2003, November 2003, granted the Special Permit for the installation of the wireless facility. It was constructed in 2004, and now the applicant, as part of the installation, is asking this board to modify that so it can become what they call a WI-MAX compatible or a 4G. I explained to this board somewhat what that is, and I can go into that further.

First, what I'd like to do is show the board what we're proposing to do. Essentially to make it simple, we are --

TIM HUGHES: Simple would have been one page.

ATTORNEY ADAM BRAILLARD: I'm handing you photograph simulations.

CONSTANTINE ALEXANDER: These are the same ones in the file?

ATTORNEY ADAM BRAILLARD: Same ones



that are in the file. These are more clear. I printed them separately and not copied them so the board will have a clear view.

We're installing two-foot dish antennas. That's the, that's the extent of the installation. What I'd like to hand the board now are just updated plans that --

CONSTANTINE ALEXANDER: Updated? These are not the plans that are in the file?

ATTORNEY ADAM BRAILLARD: They should be in the file. I submitted these to Sean on Monday.

CONSTANTINE ALEXANDER: Okay.

ATTORNEY ADAM BRAILLARD: If they're not in the file, I made copies in the event that they --

CONSTANTINE ALEXANDER: Same ones dated -- there's one here in the file dated 12/14.

ATTORNEY ADAM BRAILLARD: Same ones. The only difference between these, we

redesigned the mounting on one of the -- one of the back hauling antennas, One of the mounting brackets of the antennas so we can have a lower profile. These are the things we're learning from the board recently. So we're trying to make it as least intrusive as possible.

What we're proposing to do is install two, two-foot dish antennas. The first one, the best way to view this is to go to -- on the plans dated 12/14/09, A1. And you have a rooftop plan view. And the -- to orientate this, Sidney Street is on the left side of the building. And then I believe it's Green, Green Street on the top side. So we're proposing to install one of the dish antennas above but behind the existing wall.

CONSTANTINE ALEXANDER: Above but behind?

ATTORNEY ADAM BRAILLARD: Right. If you want to look at the mounting detail,

that would be on -- you can see a vertical view which is the northern elevation on A2 which shows the dish above the existing wall.

CONSTANTINE ALEXANDER: Okay.

ATTORNEY ADAM BRAILLARD: But then if you look at the mounting detail on A4, the lower left-hand corner, you'll see that it's behind the existing wall and attached to another existing wall. The reason for the installation there is we're utilizing an existing pipe mount. We're going to actually replace the pipe mount to extend it. We're going to utilize that pipe mount and then attach the dish antenna to the top of that. So it extends -- it extends above the wall somewhat, but set back I would say about a foot, to a foot and a half. The photo simulations, to my understanding, they couldn't find an angle that would actually see the installation of this particular dish because of the way it was set up on the

building. It's set back --

CONSTANTINE ALEXANDER: There's only one -- I notice there's only one, but it gives you a comparison, existing and proposed?

ATTORNEY ADAM BRAILLARD: Right. I think they took that from the lower roof of the -- or the roof -- the lower rooftop. Essentially --

CONSTANTINE ALEXANDER: Why couldn't they do the others, the other views?

ATTORNEY ADAM BRAILLARD: The problem is it's set back from the bottom of -- from the roof deck itself, No. 1.

No. 2, it's also set back from the front wall.

CONSTANTINE ALEXANDER: So it's not visible?

ATTORNEY ADAM BRAILLARD: It's not visible, right. They couldn't find an angle where it was visible.

And the third issue is across the street on Green Street, there's a big building so that blocks a lot of the visibility. So if you cross the street and look up, you're not able to see it.

TAD HEUER: Where is that antenna on A1?

ATTORNEY ADAM BRAILLARD: Yes, that antenna on A1 is -- if you look to the northern center -- top part of the building, and I'll just come over and point it out. Proposed right here (indicating).

TAD HEUER: Here?

ATTORNEY ADAM BRAILLARD: Yes. And that's what we call the Sector 1 of two sectors.

BRENDAN SULLIVAN: What does the dish antenna that the panel antennas -- what's the difference between the two of them?

ATTORNEY ADAM BRAILLARD: Right.

The panel antennas are essentially the network receiving -- receive and transmit the WI-MAX information and translate it and provide it to the handheld unit.

BRENDAN SULLIVAN: So it receives and transmits?

ATTORNEY ADAM BRAILLARD: Right.

BRENDAN SULLIVAN: Okay.

ATTORNEY ADAM BRAILLARD: The back haul, what they call back haul dish antennas are -- essentially replace the T1's. So in other words, instead of using T1's here, we're going to use these dishes. The reason why we need to use the dishes is because of the WI-MAX high speed broadband internet service that Clearwire is providing. They need tremendous amount of T1's to optimize the -- these particular sites. They would need equivalent of about 400 to 600 T1 lines. And what these back haul do --

BRENDAN SULLIVAN: In simple

laymen's term, the panel antennas for your cell phone communicate or talking and the other one is for internet, information?

ATTORNEY ADAM BRAILLARD: Right.

BRENDAN SULLIVAN: And some simple or is it a little more complicated?

ATTORNEY ADAM BRAILLARD: It's a little more complicated than that. The back haul provides a feed to other back hauls and then to a hub to get the information back and transmit it back out quicker than the T1 line would and more optimizes and more reliable. But --

CONSTANTINE ALEXANDER: Is this going to supplement what's there now or replace?

ATTORNEY ADAM BRAILLARD: It's -- it adds to it. So we're not going to change any of the antennas.

CONSTANTINE ALEXANDER: The section antennas plus these two new additional

dishes?

ATTORNEY ADAM BRAILLARD: Right.

The other two components to the installation, the first being the dish antennas, the two dish antennas. The second being the -- there's going to be one, one in conduit run, and that's just going to connect the proposed dish antennas to the existing spring shelter which is on the lower roof. And that one pin conduit run is going to, is going to run along the existing co-ax run so that won't be --

CONSTANTINE ALEXANDER: What are you going to do to minimize visual impact?

ATTORNEY ADAM BRAILLARD:

Everything will be installed that's visible, which will include both antennas, and any co-ax runs will be painted to match the color of the building or more accurately the color of its background. So in this particular case, it would be the color of the wall behind



it. And with the Sector 2, which I really haven't gotten into, but it's essentially a similar installation, that will match the color of the existing penthouse. Both the antenna and the mounting hardware. And then the final installation, which isn't going to be visual, is adding one equipment cabinet within the existing spring shelter that's on the lower -- that's existing, and on the lower rooftop. That's essentially the proposal.

TAD HEUER: Just to clarify, there's no view of the first antenna we were discussing from Mass. Ave. over the park where the fire station is? I mean, I see you're showing us from the corner of Brookline and Green. And I understand why you can't see it from there.

ATTORNEY ADAM BRAILLARD: Right.

TAD HEUER: And from Mass. Ave. I see Brookline after and Blanch Street and I understand. The Sidney and Mass. Ave. the

fire station and the Goodwill, so there's no view of that new antenna from the corner of Sidney and Mass. Ave. looking out over? Is it just that the building blocks it, is that the --

ATTORNEY ADAM BRAILLARD: Part of the, the building that's on parcel 69-159 --

TAD HEUER: Yes.

ATTORNEY ADAM BRAILLARD: -- is very large. I don't think it's as tall as the subject building.

TAD HEUER: Right.

ATTORNEY ADAM BRAILLARD: I don't know.

TAD HEUER: My question is: I'm saying the front door of the fire station which is 92-57 --

ATTORNEY ADAM BRAILLARD: Right.

TAD HEUER: -- and I look over across Sidney Street and up into 20 Sidney Street with I think exceeds in height 69-159 there's

no view from where I can see the antenna?

ATTORNEY ADAM BRAILLARD: I'm not sure. There may be a slight view. I didn't take the -- I didn't do the photograph simulations. I know that what they do is they go around and in a 300-foot, you know, 100-foot, 200-foot, 500-foot around, they look to see where they can see the proposed installation from. So that -- I trust that the viewpoints that they provide are the viewpoints where they were -- it's either from an existing -- I'm sorry, a public way.

TAD HEUER: Right.

ATTORNEY ADAM BRAILLARD: Where it's visible and actually where it's visible from. So I didn't take the photograph simulations so I'm not sure if there actually would be --

TAD HEUER: But you're representing to us that that's true, right?

ATTORNEY ADAM BRAILLARD: What I

represent to you that it's over 300-foot away. I know that the building that's at 69-159 comes right up almost -- so that it's almost to the edge of the parcel so that all there is is a walkway. And if you take that angle and you see what we're proposing to install this antenna, if there is an angle, it's very, very, very minimal and you're over 300 feet away if you're looking at a one to two foot dish. My sense is that if there is an angle where it can be seen from Mass. Ave, it would be very, very de minimus.

CONSTANTINE ALEXANDER: And if we grant you relief, I'll put the condition on the basis, among other things, that the project will be consistent with the photo simulations that we have and that there is no other visual impact that could be shown on the photo simulations taken in the ordinary course that's not represented to us. So, you may not want to stand behind it, but your

client is going to have to stand behind it if they're going to want to proceed with any relief we grant them.

ATTORNEY ADAM BRAILLARD: That's, that's fair.

CONSTANTINE ALEXANDER: Any questions from this Board?

Is there anyone in the audience who wishes to be heard?

(No response.)

CONSTANTINE ALEXANDER: No one wishes to be heard.

There is a letter in the file from the Planning Board dated October 22, 2009 addressed to us.

"The Planning Board viewed this application for the addition of different antennas and associated radio equipment and finds that this installation takes advantage of existing mechanical penthouse facade for the installations. The visual impact of

this installation is minimized and is an example of the desired-type of installation. The Planning Board supports this installation request."

Comments from members of the board?  
Are we ready for a vote? Ready for a vote.

The Chair moves to grant the petitioner a Special Permit to add two wireless back haul dish antennas and one radio equipment for the applicant's existing wireless communication facility currently operating on the rooftop of the building. The Special Permit in connection with this Board will make the following findings:

That the petitioner is a duly FCC licensed telecommunications carrier as witnessed by materials submitted by the petitioner, and included in our files.

That the extent, the visual impact of the elements proposed solely will be minimized by coloration of the new equipment

such to match the coloration of the area behind it so that the visual impact is minimized.

And not be located in the residential district so we don't have to make findings there.

And the further findings that we have to make with regard to all Special Permits that we grant, that the petitioner cannot meet the requirements of this ordinance because the ordinance requires a Special Permit for a -- for the equipment being proposed. That the -- what's being proposed will not cause congestion, hazard or substantial change in the established neighborhood character. In fact, we're talking about equipment on rooftops which almost by definition does not create congestion or change in the established neighborhood character. In fact, there is existing telecommunications equipment on the

roof as it is, but the petitioner is proposing to supplement and augment what it now has. And I think there is no evidence in the record or in the community at large that telecommunications facilities of this sort create hazard to the occupants of the City of Cambridge.

That the continued operation of adjacent uses would not be affected by the antenna. In fact, as I said, there is antenna there. There are antenna there already, and we're talking about an area that is generally, it's non-residential in nature. And so telecommunications equipment of this sort is not unusual in the area of this sort.

That there will be no nuisance or hazard created to the detriment of the health, safety and welfare of the occupants of the city. Again, as I already indicated, telecommunication antennas do not create any



type of hazard, at least that we're aware of at this point in life. And that there would be no roof on the buildings out of sight -- not out of sight but in an area where the sight lines and visual impact will be minimized.

And that the proposed use would not impair the integrity of the district or adjoining district. They indicated that the district is a non-residential, suitable for telecommunications equipment.

These findings are all based on the following conditions:

That the work proceed in accordance with plans submitted by the petitioner. There is a series of plans, first page of which is T-1, and initialed by the Chair.

And further on the condition that the work proceed in accordance or proceed and be consistent with the photo simulations submitted by the petitioner, prepared by Bay State Design dated August 2009. First page

of which has been initialed by the Chair. And with regard to these photo simulations, that these photo simulations represent the only visual impact of this proposed work that's -- customarily would be identified at a photo simulation prepared and submitted to this Board.

On the further condition that the work proceed in a way that the visual impact of the new equipment will be minimized by adopting the coloration of the adjoining or background material.

On the further condition that if the antenna or in any way discontinued or not used for a period of six -- at least six months, that they be promptly removed. And the building be restored as possible to its preexisting condition. That's it.

All those in favor of granting the Special Permit on the basis so moved, say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Motion granted.

(Alexander, Hughes, Sullivan, Scott, Heuer).

(Discussion off the record.)

(7:20 p.m.)

(Sitting Members: Tim Hughes, Brendan Sullivan, Slater Anderson, Tad Heuer, Mahmood Firouzbakht.)

TIM HUGHES: The Chair will call case No. 9863, 190 Harvard Street. Once again could you identify yourself for the record and spell your name.

MICHAEL DAVIS: Michael Davis,  
M-i-c-h-a-e-l D-a-v-i-s.

FLOYD LOZANO: Floyd Lozano,  
F-l-o-y-d L-o-z-a-n-o neighbor.

TIM HUGHES: So we were waiting for a copy of this which is the drawing that had lines on the thing as we requested in our first hearing, first time through. And that's in the file. I'll let the board ask any questions they have concerning that.

Do you have any questions, Tad?

TAD HEUER: So at the risk of stating we have two plans, one of which requires a

curb cut and the other that states you want the plan that you like us to approve to have 17 spaces, you have to get a curb cut that's the jurisdiction of other city departments to which you have to follow the procedures. And if you don't use the curb cut, get a new curb cut and using the existing curb cut you would be limited to the 14 spaces that are on the second page of the plan?

MICHAEL DAVIS: Yes.

SLATER ANDERSON: We're still talking about the barrier that we discussed. Are you satisfied with that?

FLOYD LOZANO: Yes, I am. I believe that indicates -- that drawing indicates a two-foot spacing between the -- from the beginning of the barrier and the one-foot allocation for that barrier. And I believe there is also a sketch that was earlier submitted that indicates that, you know, approximate dimensions of that barrier

further amended to just state that the length of that is such that it's three feet from me. I think that's -- that's it, yes.

TIM HUGHES: I'm sorry. The last thing you said, it's three feet from --

FLOYD LOZANO: Either end.

TIM HUGHES: Either end.

FLOYD LOZANO: I don't know that that dimension is stated.

TIM HUGHES: I don't see it.

SLATER ANDERSON: We know that length is 69.9 feet. I think the plan that was submitted, 60 feet. So it's technically four and a half feet on each side.

FLOYD LOZANO: My only concern that it be significantly -- substantially less than the width of an average car.

SLATER ANDERSON: I think it is.

TIM HUGHES: We don't want to sneak any cars on the outside.

FLOYD LOZANO: I don't want them

plowing through my yard, that's all.

TIM HUGHES: Any other questions or comments?

We don't need to open this up to public testimony again, do we?

BRENDAN SULLIVAN: I think you closed it.

TIM HUGHES: A while ago, right?

BRENDAN SULLIVAN: Yes.

TIM HUGHES: We're ready for a motion.

The Chair would move --

MAHMOOD FIROUZBAKHT: What are we voting on?

TIM HUGHES: I'm going to figure that out in a second. We're voting on the placement of the barrier as presented by these plans, this drawing. And we're voting on -- well, we're voting that they --

TAD HEUER: It's for a Special Permit, right?

TIM HUGHES: Special Permit, right?

SEAN O'GRADY: Yes, right.

Granting a Special Permit on that plan once they get a curb cut prior to that on the 14 plan.

BRENDAN SULLIVAN: So we're approving it for 17 spaces with the curb cut?

TIM HUGHES: Interim plan of 14 spaces prior to any curb cut?

SEAN O'GRADY: Yes.

TIM HUGHES: Okay.

The Chair would move that a Special Permit be granted for the proposed shared use of parking contingent on a barrier being built at the length of 60 feet separating itself from the next abutter's property by two feet, and its placement being -- according to this hand drawn plan that I'm going to initial, the Chair will initial and date as, today is the 17th. And according to this drawing which shows its



height and length.

And that the permit be granted contingent on an interim use of 14 spaces until a curb cut can be obtained which would allow the parking lot to be -- the use be expanded to 17 spaces. Am I missing anything? I got to go through the list of the Special Permit stuff.

SEAN O'GRADY: The findings.

TIM HUGHES: What page is that on?

SEAN O'GRADY: I have it for you right here.

TIM HUGHES: The Chair finds that it appears the requirements of this ordinance cannot be and will not be met without a Special Permit.

That traffic generated and patterns of access and egress would not cause any more congestion than the existing use of the parking lot.

The continued operation or development

adjacent uses as permitted in the zoning ordinance would not be adversely affected by the nature of the proposed use.

That no nuisance or hazard would be created to the detriment, health, safety and welfare of the occupants of the city.

And that the proposed use would not impair the integrity of the district or adjoining district otherwise derogate from the intent or purpose of the ordinance.

That no new use or building construction -- I mean, the new use and building construction is not inconsistent with the urban design objectives set forth in Section 19.30.

Did I get everything?

SEAN O'GRADY: Yes.

TIM HUGHES: All those in favor.

(Show of hands.)

TIM HUGHES: That's five in favor.  
Permit is granted.

(Hughes, Sullivan, Firouzbakht,  
Anderson, Heuer).

(Discussion held off the record.)

(7:30 p.m.)

(Sitting Members: Constantine Alexander, Tim Hughes, Brendan Sullivan, Thomas Scott, Tad Heuer.)

CONSTANTINE ALEXANDER: The Chair will call case No. 9850, 21 High Street. Is there anyone here on that matter?

Please come forward. For the record, please identify your name and address.

THEODORE VAN SICKLE: I'm Ted van Sickle. I live at 19 High Street.

PETER LEWANDOWSKI: And Peter Lewandowski, the designer. Peter L-e-w-a-n-d-o-w-s-k-i.

CONSTANTINE ALEXANDER: I see the revised plans, you didn't change the dating on your revised plans.

PETER LEWANDOWSKI: I'm sorry, I thought we withdrew. I thought we had a different withdrawal.

CONSTANTINE ALEXANDER: I want to

make sure we are -- we had the same plans.

PETER LEWANDOWSKI: I dropped them off to Sean on Monday.

SEAN O'GRADY: Yes, we saw the new plans.

CONSTANTINE ALEXANDER: I just want to make sure we're already all right. Okay, you want to raise the roof line and you want to --

PETER LEWANDOWSKI: Right.

CONSTANTINE ALEXANDER: -- roof ridge and add dormers?

PETER LEWANDOWSKI: The FAR is pre-existing, non-conforming. We're modifying it based on the area. We do have space upstairs in the attic that's actually accessible. Under the building code the existing access code does not give us the access to get up there. The request is to modify the roof line under a new pitch still underneath the limits, and we are asking for

one dormer on the right-hand side of the property. The dormer for the most part doesn't conform to the requirements as far as --

CONSTANTINE ALEXANDER: Why couldn't you make the dormer exactly conform? In other words, you have 15 feet, 9 inches and the dormer guidelines are 15 feet. Why the extra nine inches?

PETER LEWANDOWSKI: Well, mostly the dormers on the side for the staircase, but to get a little space in the bathroom. Make the bathroom a little more comfortable as far as the size.

CONSTANTINE ALEXANDER: There's a structural reason for it.

PETER LEWANDOWSKI: Correct. I know that the Board likes the dormer on both sides. We're not requesting on both sides. We only have it on one side and his property.

CONSTANTINE ALEXANDER: My question

is still -- I know you have dormer on one side. Why isn't the dormer on ones ide compliant with our dormer guidelines? That was the issue before on why you withdrew.

PETER LEWANDOWSKI: Correct. We had two dormers and we put it back to one.

CONSTANTINE ALEXANDER: I know.

PETER LEWANDOWSKI: The structural issue in here, and to make the spaces to the code requirements.

BRENDAN SULLIVAN: I think to answer it, my thought when I first saw that as quite but not 15 foot. The existing stair up there does not meet code. They're going to have to put in a new stairway so you're six feet of this 15 foot, nine inch stairway to comply with code. And then the rest of it is a reasonably laid out bathroom. Nothing exorbitant but somewhat, just a tad more than minimal. So I think that's what stretches.

CONSTANTINE ALEXANDER: Thank you.

BRENDAN SULLIVAN: The bubbler if you will a bit. But I think a lot of it has to do with the stairway.

PETER LEWANDOWSKI: Right.

CONSTANTINE ALEXANDER: By the way, just for the record, the reason you're seeking this variance, you have an FAR issue. Right now you have a non-conforming structure. You're at 0.534 in a 0.5 district. You want to go to 0.59. So you're talking about a relatively slight increase in FAR, but you're already over the FAR and that's why you're here before.

PETER LEWANDOWSKI: Right, yes. And the other hardship is the code requirements as far as the staircase that's there right now under the state building code.

CONSTANTINE ALEXANDER: This is a two-family house?

THEODORE VAN SICKLE: Yes.



PETER LEWANDOWSKI: Right.

CONSTANTINE ALEXANDER: Is it a condominiumized or do you own the whole building?

THEODORE VAN SICKLE: I own it, and it was a two-family and I'm breaking it into two condos.

CONSTANTINE ALEXANDER: So you're going to condominiumize it?

THEODORE VAN SICKLE: Yes.

CONSTANTINE ALEXANDER: An observation and just an observation, typically when we have many dormer cases, and almost always is the case where someone comes in single-family home that needs more living space, a growing family, and that's usually the hardship. In your case you're basically asking us to allow you to increase the size of the building to increase the value of the building so you can sell the condos for more money. And basically its a situation where

you're asking us to create value for yourself rather than to correct an injustice.

PETER LEWANDOWSKI: There's two points to that. One is to get access to that attic that we're already allowed to by state building code, by trying to create a staircase that works. And basically this stairway works over the existing stairway as opposed to being in the back of the house is existing right now. The other consideration by adding the space we are, we are adding value to the property, but I think what Ted is trying to achieve by adding the bedroom space in the third floor is adding a space that's more family-oriented in a family neighborhood as opposed to a two-bedroom unit with a transient where a couple can be with a family.

CONSTANTINE ALEXANDER: Are you going to continue to own one of the units?

THEODORE VAN SICKLE: No.

CONSTANTINE ALEXANDER: So we're talking about, Ted, you're not going to live there after we grant relief.

THEODORE VAN SICKLE: I live next-door.

PETER LEWANDOWSKI: He lives next-door.

CONSTANTINE ALEXANDER: You're not going to keep the building.

THEODORE VAN SICKLE: No. I bought the building from my neighbor a couple of years ago. He was 75. He didn't want to take care of it. I said I would buy it. He's passed away. I don't want to be a landlord. I don't want to -- so now it's time to --

CONSTANTINE ALEXANDER: You can sell it now as it is.

THEODORE VAN SICKLE: Well, it's kind of like two bedrooms, one bath. It's going to be a lot more saleable -- I don't think there's going to be a huge amount of

money extra by having this, but it's going to be a lot more attractive to someone if you can say it can become three bedrooms and two baths. It's going to be -- with this market, this economy, I don't think there's going to be a huge amount of value created by doing this, but it will make it a lot more attractive to more people. And I've talked with everybody in the neighborhood and with -- and they're -- everybody is supportive of what I'm trying to do.

CONSTANTINE ALEXANDER: You don't have any letters. I don't doubt what you're saying.

THEODORE VAN SICKLE: I did last time and I forgot to bring them this time. I talked with everybody on High Street and I had everybody sign off. And I had David Maar also write a letter in support for the work I've done on my house, just doing things nicely. The work that I've had done on this

house that this -- the 23 High Street, people know the type of work that I have done on the house and I want to continue doing the house.

CONSTANTINE ALEXANDER: From the hardship to you -- as you probably know, to create a variance we have to find a substantial hardship with the special conditions. In your case with the structure what is the hardship?

PETER LEWANDOWSKI: The -- creating the stair is code requirement. The existing staircase is not there does not meet --

TAD HEUER: You don't need to meet code if you leave it the way it is, right?

CONSTANTINE ALEXANDER: Exactly.

TAD HEUER: It's pre-existing.

PETER LEWANDOWSKI: If you modify the roof line without the dormer, you have access to a space, but the code still requires a certain amount of elevation to bring it up to code as far as requirement.

TAD HEUER: But you can't back into a variance that way. You can't say by added -- by raising the roof and therefore we've created, by our own fault and not the planned stairway, and you have to give us a variance to make your stairway compliant.

PETER LEWANDOWSKI: I understand. The code requirements are -- to get the variance of the hardship we have to have a staircase that does not right now, it did at the time, at some point did meet code requirements. We could get access to -- whether you leave it as living space or not, it was never finished off space. You could finish off the space above and use the staircase and could possibly grandfather, but in the process, I mean, to make it a more of a liveable space and make it more liveable for a family-oriented format. I mean, yeah, part of it is there is a monetary gain in the process of people are able to make more money

possibly by having a larger unit expansion, but the other part I think is the gain of having -- being able to have a family move in. I mean....

THEODORE VAN SICKLE: Right now we're just trying to do the right logical thing here. Right now there's a staircase that goes through a back bedroom. It's just not the right place for it. So we're trying to move it, do things correctly the way it should be and make it look right. I live in the neighborhood. I've got to make sure -- and I've lived there for 30 years. I want to make sure -- and I live right next to it. I want it to look nice.

PETER LEWANDOWSKI: And the other question would be even if we finish the attic space, the way it is, building code requirements, as far as the staircase that's there right now, being usable as far as the -- as far as meeting the code

requirements.

TAD HEUER: It could never be a question of whether it's usable or not because it's there.

PETER LEWANDOWSKI: But it does. If it worked before and you're modifying a space and if you wanted to finish off the attic space and you have the access there, it's actually called -- the building inspector whether that staircase meets the building codes.

CONSTANTINE ALEXANDER: You're missing Mr. Heuer's point. The building is inhabitable now, the first floor and second floor.

PETER LEWANDOWSKI: And the attic space.

CONSTANTINE ALEXANDER: Now you want to be able to use the attic space.

PETER LEWANDOWSKI: It's usable space as it is right now. There is 441



habitable square space right now. That is by definition of a building code, habitable space because there is a ceiling height limit.

TAD HEUER: Right.

PETER LEWANDOWSKI: The issue is if you finish that space, I mean finishable space is now that you've activated a code requirement that, all right, you've activated, finish the space off and insulate it and have it be habitable, but is that staircase you're creating is accessible is a question. There's a chance the inspector could say yes, it is, but the other part is the building code says well no, it's not so you have to modify it, the staircase. So one of the questions is getting the dormer on the side which follows the existing staircase that goes up to the unit right now and continue with the same staircase going up with egress.

TAD HEUER: Then the hardship really is that you can't -- that you want -- you want access to finishable space. You want access to finish space that's finishable and usable now and you can't because if you finished it, you'll need possibly a staircase which you can't do without a dormer which requires relief. So the hardship isn't necessarily the dormer. The hardship is you want access to finished space that you don't think you could get access to if you finished.

THEODORE VAN SICKLE: It's not a pretty staircase that's in there now. It's pretty steep and it's --

PETER LEWANDOWSKI: In a way I suppose you can look at it that way. I suppose we can.

TAD HEUER: You're going to have to look at it that way.

PETER LEWANDOWSKI: We can argue back and forth on format. The issue that

comes into play is realistically the building inspector's fault. We have a lot of projects where you walk in, look, I don't care what you do with the building as long as you make it code compliant whatever you do in here. That means everything in here has to be code compliant: Staircases, railings, windows, capacities has to meet. We can call the building inspector. Look, change the roof and not ask for a dormer, and coming back to the board because he says I'll let you change the roof and the dormer, but now you have to modify the stair. Egress about the staircase goes. We have a hardship because if we want the space to be finishable, I mean, I don't know is that a hardship as far as the Board is allowed to grant or not based on fact that you have usable space? It's just that right now, based on the codes that have been created as opposed to what we have right now, doesn't actually allow you access to that

space. So I don't know how the building code and the Zoning By-Laws, you know, a lot of times fall into play with each other. It's a tough call.

TAD HEUER: So how much space do you have up there that's usable in your original FAR right now? You're 2,961.

PETER LEWANDOWSKI: The attic space right now is actually 460 square feet. And we're going up to 771.

TAD HEUER: All right.

THOMAS SCOTT: And it's accessed by a stair that's steep.

PETER LEWANDOWSKI: Steep and narrow and head room at the top of the stairs.

THOMAS SCOTT: So it doesn't meet the width requirement, the riser and the tread ratio requirement.

THEODORE VAN SICKLE: Correct.

PETER LEWANDOWSKI: Correct.

THEODORE VAN SICKLE: That's right.

PETER LEWANDOWSKI: We're at 460 and we're adding total 771.

TAD HEUER: Right. So just hypothetically let's say you're -- you were at 2,961 and you're usable -- you're saying is 2,961 less 460, is that what you're saying?

CONSTANTINE ALEXANDER: I thought it was usable.

PETER LEWANDOWSKI: Correct.

CONSTANTINE ALEXANDER: But not desirable usable as you like.

TAD HEUER: Yes.

PETER LEWANDOWSKI: But the definition of usable is head room requirements. I mean, it's not by code as far as you know, five feet knee walls at one point and then five foot knee walls hit and that's your usable space within the roof line.

TAD HEUER: So I guess my question almost is, is --

PETER LEWANDOWSKI: 2,961.

TAD HEUER: So you're arguing that there are in practice 2,501 which is 2,961 minus 460 of usable.

PETER LEWANDOWSKI: Correct.

TAD HEUER: And your lot area is 5,542.

PETER LEWANDOWSKI: Uh-huh.

TAD HEUER: So, using that number -- somebody have a calculator?

SEAN O'GRADY: Okay.

TAD HEUER: 2,501 divided by 5,542.

SEAN O'GRADY: Equals 0.45.

TAD HEUER: So actually you have a 0.45 and you're looking to go to a 0.59.

PETER LEWANDOWSKI: Well, that's if you did the attic space.

TAD HEUER: Right.

PETER LEWANDOWSKI: That's if it's not habitable now. Technically it's habitable. What Ted could do, sheetrock the

walls, put in knee walls and illegally, I guess without a building permit, go in there illegally and make it a finished space. Somebody could at some point make a finished case. I've got staircase and knee walls and liveable space. That was the question, it wasn't finished off at some point, but the fact is they have an access to it. It was too narrow. The riser run don't go to the top of the stairs and the roof line. So at some point you could have been finished.

TIM HUGHES: That space is FAR whether he's using it or not. The 0.45 is not the number we're looking at. You can't take that off of it.

TAD HEUER: I'm not taking it off of it. He's asking for 700 feet really because he's saying he has 460 that's usable and they're counting, which he's got.

PETER LEWANDOWSKI: That's FAR.

TIM HUGHES: That's already part of

the FAR.

TAD HEUER: He's saying I can't use it. He's saying I got a house, a 0.45. Practically. And I'm at a 0.5.

PETER LEWANDOWSKI: But floor area ratio even if you have a porch. The porches also count. So basically any counts inside as I understand it.

TIM HUGHES: I don't get the distinction. The house is there and it has the amount of square footage. So his FAR is right now at 0.53.

TAD HEUER: Yes.

PETER LEWANDOWSKI: Yes.

THEODORE VAN SICKLE: Yeah.

TIM HUGHES: If the additional FAR makes 400 feet more usable than it is right now, because it's usable right now, just not usable for what they want to use it for.

CONSTANTINE ALEXANDER: Exactly.

TIM HUGHES: So I don't think it as



a jump of 700. I see it as a jump of 300.

BRENDAN SULLIVAN: It's usable but not desirable.

TIM HUGHES: Right, exactly.

THOMAS SCOTT: I don't think you can deduct it from the calculation. I think you have to count it.

BRENDAN SULLIVAN: Even though it's usable and not desirable, it makes it useless what's there now.

TIM HUGHES: If you don't use it, it's useless.

THOMAS SCOTT: It's useless but still part of the calculation.

TIM HUGHES: I would think so.

CONSTANTINE ALEXANDER: Any other questions from members of the Board?

THOMAS SCOTT: So I have a question. So can't the hardship be that you have this space, it's including the FAR that you just have -- you don't have reasonable access to,

and the code requires, you know, a code compliant stair. Can't the configuration of the house be the hardship? The fact that the house is not -- was designed -- let's say the house is 100 years old, was designed in a way that maybe back then that area wasn't useful enough to store things but they didn't live in it. But today....

TAD HEUER: It's still used for storing stuff. It's a code compliant stairway to get there.

THOMAS SCOTT: Yes, but --

CONSTANTINE ALEXANDER: I think in my judgment you put your finger on the hardship. The question in my mind is it sufficient hardship? Because, just because the space says you can't use it to the maximum extent you'd like, does that mean that you're entitled to a variance to approve upon that and create, if you would, adding more FAR by adding the dormer? That's the issue.

PETER LEWANDOWSKI: If you had a triple decker of a house and modified an egress stair out of it, correct? And you want a setback requirement, you could get a variance to create it, an egress stair on the side of the house. You still give it a variance based on being able to get out if you --

CONSTANTINE ALEXANDER: There are safety issues. That's completely different.

PETER LEWANDOWSKI: Basically you're still creating access. You're still creating something that needs egress out of that space.

CONSTANTINE ALEXANDER: The reason for creating egress out of the space is different. Those are safety factors.

PETER LEWANDOWSKI: What you were saying, the configuration of the unit, you know, make it difficult to make it comply for

what you have right now and that would be the same, the configuration of the unit the way it's laid out does not need code requirements at this point so therefore requires the dormer to have the access space.

THOMAS SCOTT: You could essentially put the stair in and maybe not do the bathroom up there. Make the dormer smaller and meet the FAR requirement.

SEAN O'GRADY: I should also point out the roof is being raised.

THOMAS SCOTT: What's that?

SEAN O'GRADY: The roof is also being raised.

THOMAS SCOTT: Being raised but not above the limit.

SEAN O'GRADY: That in itself is adding FAR.

PETER LEWANDOWSKI: What if we stole another nine inches?

CONSTANTINE ALEXANDER: It wouldn't

be our issue. It wouldn't make a difference. You still need a variance. The 15 foot is only a guideline which we like.

PETER LEWANDOWSKI: We're over anyway. It's more of a stipulation. We're as far as we're --

CONSTANTINE ALEXANDER: If you put a ten foot dormer, you still have the variance and the same issues that we're talking about. It has nothing to do with the 15 inches.

THOMAS SCOTT: So by changing the pitch of the roof whatever it is, 8, 12, 10, 12, you increase the area of the FAR area just by doing that, is that what you're saying, Sean?

SEAN O'GRADY: Well, I understood the whole roof is coming up like that.

PETER LEWANDOWSKI: No. Basically taking it and twisting it.

SEAN O'GRADY: More FAR there.

THOMAS SCOTT: They increased the

pitch.

PETER LEWANDOWSKI: The dormer doesn't necessarily have to the square feet of area. It could probably go more minimal than that.

THEODORE VAN SICKLE: And make it look nicer from the outside. The neighbors, when I showed them the drawings, the plans, that was a big plus by raising the roof, making it look sort of short.

THOMAS SCOTT: I agree with that. I think the steeper roof is a much better architectural solution.

CONSTANTINE ALEXANDER: If it makes any difference, the measurement's 29 feet, 7 inches and they're going to 33 feet, 2 inches. Almost three and half feet.

THOMAS SCOTT: I think it's going to be a huge improvement.

THEODORE VAN SICKLE: And I thought personally 35 feet was too much. So I didn't

want that. So this looks better.

CONSTANTINE ALEXANDER: Let me see if there's anyone here in the audience wishing to be heard on this matter?

(No response.)

CONSTANTINE ALEXANDER: No one wishes to be heard. There's no correspondence in the file.

Anything further you want to add before we talk about it among the Board?

THEODORE VAN SICKLE: No, other than just in general it's kind of -- it will make the house look nicer, and it's nothing -- I don't think it's anything radical what I'm trying to do here.

CONSTANTINE ALEXANDER: That's for us to decide.

THEODORE VAN SICKLE: I know. And I don't think it....

CONSTANTINE ALEXANDER: Comments? You want to go to the vote?

THEODORE VAN SICKLE: The house was built in 1925.

BRENDAN SULLIVAN: I was uncomfortable with the first proposal. I think they did scale it back, and what's before us now I can understand why they're doing it, and I think it's a somewhat fair and reasonable request and not inconsistent with what we've granted in the past.

CONSTANTINE ALEXANDER: Other members wish to comment?

TIM HUGHES: I agree with Brendan, that it's not inconsistent with what we've done in the past.

CONSTANTINE ALEXANDER: Ready for a vote?

The Chair moves to grant the petitioner a variance to raise a roof ridge and add a dormer on the basis of the following findings:

That subject to compliance with a



condition that will be part of the decision, that the literal enforcement of the provisions of the ordinance will involve a substantial hardship to the petitioner. The hardship being that the petitioner has usable space within the structure that could be better utilized should the relief be granted.

That the hardship is owing to the shape of the structure. Particularly the fact that it is a non-conforming structure, an older structure with a roof line such that making a staircase to the third floor as proposed requires the relief being sought. And a substantial detriment to the public good would not occur.

We can grant relief without substantial detriment to the public good on the basis that where there appears to be no neighborhood opposition to the petition.

That what is being proposed is to create additional living space within a two-family

structure. At least based on --

TAD HEUER: For who?

CONSTANTINE ALEXANDER: For whoever occupies the structure.

And that the variance will be granted on the condition that the work proceed in accordance with the plans submitted by the petitioner prepared by -- I know you have your name on here Peter Lewandowski, L-e-w-a-n-d-o-w-s-k-i. They are numbered E1, EX1.1, EX1.2, EX2.2, EX2.2 again. EX2.3, A1.0, A1.1, A2.1, A2.2, A2.3. The first page of which has been initialed by the Chair.

All those in favor of granting the variance so proposed, say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Three in favor. The motion does not carry.

(Sullivan, Scott, Hughes.)

CONSTANTINE ALEXANDER: The matter

does not carry. You need four.

I think we should make for additional findings since we didn't grant relief. It doesn't involve you.

The finding that -- I don't know how we're going to do this if we don't have a majority for the findings. I think it's fair to say, though, that the reason the relief wasn't granted is that the hardship, as required by law, was not demonstrated by the petitioner. That the -- there is space available in the structure that's usable. Not usable to the extent the petitioner would like, but still usable and, therefore, it's not a substantial hardship if we don't grant the relief being sought. Put that as part of the record.

(Discussion held off the record.)

(7:55 p.m.)

(Sitting Members: Constantine Alexander, Tim Hughes, Brendan Sullivan.

CONSTANTINE ALEXANDER: The Chair will call Case No. 9846, 575 Memorial Drive.

Is there anyone here wishing to be heard on that?

ATTORNEY FRANCIS PARISI: Good evening, my name is Francis Parisi. I'm an attorney representing T-Mobile. T-Mobile as you're aware, is one the largest communications companies in the United States and one internationally before --

TIM HUGHES: Never heard of them.

ATTORNEY FRANCIS PARISI: We've been here several times before seeking similar relief. I'm familiar with the by-laws and hopefully we're in accordance with the by-laws. We're here tonight to seek a Special Permit to attach eight telecommunications antennas and some

equipment to the roof of the 575 Memorial Drive, better known as the Hyatt Regency Hotel. We recently had to tweak the design at the request of the landlord. We submitted new plans to Sean the other day. I think you've got those.

CONSTANTINE ALEXANDER: Question. Did you go before the Planning Board?

ATTORNEY FRANCIS PARISI: Yes.

CONSTANTINE ALEXANDER: Okay. Because we don't have a letter from the Planning Board saying what they decided. We do have, it looks like some sort of a follow-up note that says there are two -- I'll read this later on -- there are two antennas that have been relocated on the roof since the Planning Board looked at the installation proposal. As long as the antenna are installed below the roof line and the wiring is neat and orderly, communication is not an issue.

Can you tell us what the Planning Board decided?

ATTORNEY FRANCIS PARISI: They made a positive recommendation to the Planning Board.

CONSTANTINE ALEXANDER: Is that by any chance the letter? Okay, thank you. I'll read it into the record at a later time. I'm sorry.

ATTORNEY FRANCIS PARISI: Again, we're here tonight to seek a Special Permit to attach eight telecommunications antennas to the facade of the existing building. The antennas themselves will be mounted to the facade of four sides of the building. The Hyatt is a unique structure with a lot of different levels, and the antennas are at a lot of different levels depending on the facade. None of the antennas will exceed the height of the facade that they're on. They'll all be painted to match the facade

that they're on. Two antennas facing north and two antennas facing south, two antennas east and west. The equipment themselves will be placed on a lower roof shielded with fiberglass shielding that could be painted with texture to match the existing facade. The antennas themselves will be visible from certain vantage points, specifically I guess east looking west on Memorial Drive and from the back as well. But you know the antennas themselves are 150 feet from the air. They will be painted to match the facade. I think they're mounted to be visually unobtrusive as possible.

I have with me Don Wing who is a radio frequency engineer if you need to get in the technical need of the facility. My suspicion is you've heard the argument before.

CONSTANTINE ALEXANDER: As set forth in the material you submitted.

ATTORNEY FRANCIS PARISI:

Absolutely.

We submitted an Affidavit. But it states what the coverage gap is, what the need is, and what the desired rating is and the specific coverage maps that show what the coverage -- we actually have a facility relatively nearby that the Hyatt itself actually forms an impediment to the signal because the Hyatt is much taller than the building is around it. Memorial Drive and the Hyatt itself and the commercial buildings around it, it is a substantial commercial area, and the whole goal here is to increase the in-building coverage especially the building like a Hyatt where there's a lot of interior space where we are to increase the coverage in-building around the Hyatt and the surrounding area.

CONSTANTINE ALEXANDER: Now, as you know this property is in residential district



so we have to make the board certain additional findings under the current by-law. Do you want to touch upon those?

ATTORNEY FRANCIS PARISI: Yes.

CONSTANTINE ALEXANDER: You have to talk to us about the -- to the extent that demonstrates the public need for the proposed locations, and you've identified that already. I think you addressed that. The existence of alternative suitable sites in non-residential locations.

ATTORNEY FRANCIS PARISI: Even though this area is residential, the use of the building is commercial and the surrounding area is commercial. So this building is attractive to us because it's so tall. It's the tallest building in the area.

CONSTANTINE ALEXANDER: There are no functional suitable sites in a non-residential.

ATTORNEY FRANCIS PARISI: That's

correct.

CONSTANTINE ALEXANDER: The character of the prevailing uses in the area. You just touched on it. You're saying it's not residential in the nature just by fact the zoning residential.

ATTORNEY FRANCIS PARISI: That's correct.

CONSTANTINE ALEXANDER: The Board shall -- and we've got to keep going here. The Board shall grant a Special Permit only upon a finding that non-residential uses predominate in the vicinity of the proposed facility's location, and that the telecommunication facility is not inconsistent with the character that does prevail in the surrounding neighborhood.

ATTORNEY FRANCIS PARISI: We had submitted an aerial photo that substantiates that. We have Memorial Drive and the Charles River to the east is all commercial buildings

on Memorial Drive. MIT campus starts just to the east of the facility, and it's all commercial behind it going back across Waverly Street. The area is all commercial for more than the 300-foot radius.

CONSTANTINE ALEXANDER: And for the record you have submitted photo simulations. These are accurate?

ATTORNEY FRANCIS PARISI: That's correct.

CONSTANTINE ALEXANDER: And we will hold you to these in terms of our decision. And I want to make sure, as you mentioned, you had revised plans that were filed. I want to make sure we have the right ones because we're going to tie you to those plans as well.

ATTORNEY FRANCIS PARISI: The most recent set of plans.

CONSTANTINE ALEXANDER: I have to see what we have in our file. Let me see what we have here. What's the first page?

ATTORNEY FRANCIS PARISI: T1. Most recent is 12/7.

CONSTANTINE ALEXANDER: Yes.

Comments from members of the Board or questions?

BRENDAN SULLIVAN: Here's my question: Why here? What is the gap in coverage? What will this particular install help serve? Only because my thought is it's right at the very edge of Cambridge. Some of these are facing across the river.

ATTORNEY FRANCIS PARISI: T-Mobile already has a site just behind this facility. The problem is that the site that it's on now, which is designed to cover back towards Central Square, is not as tall as the Hyatt. The Hyatt actually forms a -- you can see it doesn't travel anything passed the Hyatt on Memorial Drive. The other gap that we have is running towards the campus here, and the Hyatt building itself which is a heavily

occupied building. And T-Mobile desires the coverage. The goal here, as I'm sure you learned, is to increase the quality of the signal in buildings. And when you get commercial buildings which are more dense than residential buildings, you get a building like the Hyatt which is very dense. You need a higher quality to actually reach the telephones that are inside the building.

BRENDAN SULLIVAN: And upgrading the equipment on the existing location doesn't do it?

ATTORNEY FRANCIS PARISI: Well, because that's substantially shorter than the Hyatt itself. The Hyatt becomes a topographical to the rest --

CONSTANTINE ALEXANDER: Are you going to grade coverages to areas that are not now coverages? Before and after. That's what I want to see.

ATTORNEY FRANCIS PARISI: Like I

said, one of the big problems is right along Memorial Drive because of this. Because of the Hyatt. And the -- so we cover most of the Cambridgeport -- the site has great coverage along Memorial Drive and the area around the Hyatt, including the Hyatt Regency.

TAD HEUER: Is that map suggesting that immediately east to the Hyatt would be forever a dead zone?

ATTORNEY FRANCIS PARISI: We're not done yet. We take it one step at a time. We are talking to the MIT about putting some on rooftops over there.

TAD HEUER: I'm looking immediately to the east. That little tiny white square.

TIM HUGHES: With the black dots. I wanted to ask this question anyway. If it's not colored in, does it mean there's no coverage or limited coverage there?

ATTORNEY FRANCIS PARISI: Limited coverage. This map shows what we call urban

in-building coverage. It's a quality that they can market very reliable coverage in-building. And in an urban area that's more dense than in a residential area. It does not mean that there's no coverage here, it's just lesser.

TAD HEUER: It would mean if I were out in the street, I would probably start to call, once I move into buildings it would be more difficult?

ATTORNEY FRANCIS PARISI: That's right. And the antennas themselves shadow a portion of Memorial Drive because, you know, they don't project straight down, they project out. So that's what that little gap is right there.

TIM HUGHES: It's a restaurant.

ATTORNEY FRANCIS PARISI: It's not the rotating.

TAD HEUER: I had another question on the location of the antenna, and this is

a question I guess in general about an antenna, maybe you can answer it for me. In terms of the facades where there are two panel antennas mounted, is there a reason -- I presume the reason they're not further from each other because you don't want to run the cabling the width of the building if you don't have to. Is there a reason that they can't be closer together to form a more unified panel of antennas or is that because they interfere with each other?

DON NGUYEN: Basically --

CONSTANTINE ALEXANDER: Give your name to the stenographer.

DON NGUYEN: My name is Don Nguyen, N-g-u-y-e-n. I'm the radio frequency engineer for T-Mobile. And the reason we need two antennas because like space diversity is like when you listen from one ear or two ear, this will be better when you have two ear. So basically two antenna is four



feet spacing the signal pick up from the mobile to the antenna will be quality and only one antenna.

TAD HEUER: Okay.

DON NGUYEN: It's for diversity.

TAD HEUER: Thanks.

CONSTANTINE ALEXANDER: Other questions from members of the Board?

THOMAS SCOTT: The antennas never extend any higher than the portion of the building that they're mounted to?

ATTORNEY FRANCIS PARISI: That's correct.

THOMAS SCOTT: Is that correct?

CONSTANTINE ALEXANDER: They have the photo simulations.

THOMAS SCOTT: Yes.

CONSTANTINE ALEXANDER: Other comments from members of the Board or ready for a vote?

TIM HUGHES: I'm good.

CONSTANTINE ALEXANDER: The Chair moves that a Special Permit be granted to the petitioner to install and maintain a wireless communications facility on the rooftop of the existing building consisting of panel antennas, bay station equipment, cabinets and coaxial cables.

The Special Permit -- granting that Special Permit, the Board will make the following findings:

That the petitioner is a licensed telecommunications carrier from the FCC.

That the as proposed and as conditioned -- the petition will grant the visual impact of the elements of the proposed facility will be minimized. In fact, the structures you will be adding to the building will not extend above the roof line, the wall on which they're going to be affixed. And that they will be colored to match the maximum extent possible, the facade behind it so that

they're not discernable.

That there is a demonstrated public need for the facility at the proposed location. The facility being that we're in an area of mostly offices or other non-residential uses, and the quality of the signal will be enhanced by granting the relief being sought.

That there are no alternative functionally suitable sites in non-residential locations.

The fact being that although this building is located in a residential district, most of the structures in and about this structure, the structure in question are not residential in character. And as a result, the character of the prevailing uses in the area will not be affected by the proposed relief.

And further, we would make a finding that non-residential uses predominant in the

vicinity of the proposed facility's location, and that the telecommunication facility is not inconsistent with the character that does prevail in the surrounding neighborhood.

The petitioner has demonstrated to the Board's satisfaction and the Board has personal knowledge of the nature of this area and that it's non-residential uses do predominate. And that what is proposed would not be inconsistent with the character that prevails in the surrounding neighborhood.

The Board further finds, as we are required to when we grant Special Permits generally, that you have to get a Special Permit under the requirements of our ordinance because that is required for telecommunications facilities of this sort. That we're talking about antennas on a building and, therefore, there would be no

additional traffic generated or patterns of egress or access would be affected.

There would be no congestion, hazard or substantial change in established neighborhood character.

Antennas of this sort are very rarely maintained. I mean, require ongoing maintenance work. And so it will not have an awful lot of traffic, additional traffic created by the installation of the facility as being proposed.

That the continued operation of adjacent uses would not be adversely affected by work proposed, because in fact we are in a non -- we are in a generally commercial area. In fact, as opposed to a residential area as zoned.

No nuisance or hazard would be created to the detriment of the health, safety or welfare of the occupant or of the proposed use or citizens of the city. It is also

demonstrated that telecommunications facilities do not create hazard to the citizens of the community.

And that the proposed use would not impair the integrity of the district for the reasons that were earlier identified. And we're talking generally about a non-residential area for which these antennas would not have an impact.

The relief would be granted -- a Special Permit would be granted on the conditions that the work proceed on the basis that -- you know, I should have read, I'm sorry, let me interrupt for one second. I should point out that the -- we do have a letter from the Planning Board. I want to read this into the public record. Hold my motion.

The Planning Board, as it says: The Planning Board reviewed the Special Permit application for the telecommunications installation of the Hyatt Hotel. The

Planning Board found that the proposal was thoughtful and took into account the building features in placing the antenna and equipment box in such a way as to minimize the visual impact of the installation, and to the building architecture and design. The Planning Board supports this application.

Going back to my motion: On the one condition would be that the -- you would proceed on the basis as proposed that would minimize the visual impact of the new equipment that we put on the structure. That, if the structure is -- if you discontinue the use of -- that the work proceed in accordance with the plans submitted by the petitioner, several pages. The first page which is T-1, initialed by the Chair.

And on the further condition that the work proceed in a manner that's consistent with the photo simulations submitted by the

petitioner prepared by Advanced Engineering Group, PC. The first page of which also has been initialed by the Chair.

And lastly on the condition that to the extent that these antenna or this equipment is no longer used or is not used for a period of six months or more, that they be promptly removed and the structure be restored to its prior condition to the maximum extent feasible.

All those in favor of granting relief on the basis so moved, say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Special Permit granted.

(Alexander, Hughes, Sullivan, Scott, Heuer.)

ATTORNEY FRANCIS PARISI: Thank you very much.

BRENDAN SULLIVAN: The notice sign should stay up.



ATTORNEY FRANCIS PARISI: We spoke to Sean about that. We've had issues with that and we've been driving by everyday to make sure.

(Discussion off the record.)

(8:15 p.m.)

(Sitting Members: Constantine Alexander, Tim Hughes, Brendan Sullivan, Thomas Scott, Tad Heuer.)

CONSTANTINE ALEXANDER: The Chair will call case No. 9869, 59 Foster Street.

Is there anyone here wishing to be heard on that matter?

MARK BOYES-WATSON: Yes. Mark Boyes-Watson, Boyes-Watson Architects, 30 Bow Street.

CONSTANTINE ALEXANDER: You want to put a skylight in the setback?

MARK BOYES-WATSON: We do. We come in here for the big stuff tonight. Yeah, actually I was hoping that this was, was a private way because it almost is. It's a group of four buildings off a little passage way.

CONSTANTINE ALEXANDER: I know.

MARK BOYES-WATSON: And then it

would be a side yard and wouldn't need the skylights. But it, it's really a shared driveway, so it isn't a private way. It is in the rear yard and it is in the side back and it needs relief.

TAD HEUER: It cannot be seen from the main street; is that correct?

MARK BOYES-WATSON: Yes. And I think there should be a letter in the file from the Marsh District that says that.

CONSTANTINE ALEXANDER: Yes, there is.

MARK BOYES-WATSON: Yes. So it's on -- there's a little, there's a little connector that you can see from the street. The problem seems to be there were actually buildings that have these little garages and they've -- and actually this garage says this one and this garage says this one. And there was a garage instead of this one. And there was a garage instead of this one. On 59 it's

been converted.

CONSTANTINE ALEXANDER: What's the history of this little cluster?

CAROL FISHERMAN: I don't know more than they were all built in 1927.

MARK BOYES-WATSON: Say who you are.

CAROL FISHERMAN: I'm Carol Fisherman, the owner of 59.

MARK BOYES-WATSON: Hoping to be at 59 shortly. Yeah -- no, if it wasn't matching little development. So did you, and this one has this little L that then connected to the garage which actually has the kitchen in it. So this skylight is actually, it's a low pitched roof and it's -- this is the little connector. There's that little garage that comes off Foster Street. It's actually a little courtyard garden here all already there. And we're putting this skylight in this low pitched roof.

CONSTANTINE ALEXANDER: This plan has the skylight on it.

MARK BOYES-WATSON: Exactly. Exactly. So basically we're doing just an interior renovation except for that element. And we're changing the window just slightly which doesn't matter because we're making it smaller.

CONSTANTINE ALEXANDER: The reason for the skylight?

MARK BOYES-WATSON: The ceiling height of the -- it's a cottage. We don't know. It's cottagey. So very modest. It doesn't quite meet certain criter -- it's sort of seven foot high ceiling heights. And so which is very nice. It's low and the scale is very, very nice. But in that space it's cathedral ceiling, so there is an opportunity to get just a little more lift on the thing, a little more contrast to the very low ceilings and light in the morning for the

coffee and all of that. And even that -- you know, so they're really that. It's an opportunity to mitigate the low ceilings heights and enjoy it, that's the reason for the skylight.

CONSTANTINE ALEXANDER: Questions from members of the Board.

Is there anyone here wishing to be heard?

(No response.)

CONSTANTINE ALEXANDER: No one wishes to be heard.

We do have something in the file from the Cambridge Historical Commission. It says the property is located in the Half Crown Marsh Neighborhood Conservation District and is therefore subject to the review of exterior alterations. The skylight was approved by staff with a certificate of non-applicability and the certificate is attached. And that's the sum and substance

of the correspondence of written communications.

Ready for a vote?

The Chair moves that a Special Permit be granted to the petitioner to construct a skylight in a setback on the following basis:

That the requirements of the ordinance cannot be met without a Special Permit because in fact we have a non-conforming structure in terms of setbacks and the skylight, if it's going to be built, would have to be built in the setback.

That the skylight would not cause congestion, hazard or substantial change in established neighborhood character. In fact, the skylight is modest in size and not generally visible to neighboring properties.

The continued development or use operation of adjacent uses would not be adversely affected by the skylight. Again, the skylight is not being visible, doesn't

create privacy issues. People looking out of the skylight onto other people's property.

No nuisance or hazard would be created to the detriment, health, safety and/or welfare of the occupants of the structure or to the citizens of the city. Almost by definition a skylight does not create nuisance or hazard or health issues.

And that the proposed use would not impair the integrity of the district or adjoining district. In fact, it is a modest change with really no visual impact on the adjoining properties and it makes the house more habitable by increasing the amount of light and helping to mitigate the impact of a relatively low ceiling height on the top floor of the structure.

The Special Permit would be granted on the condition that work proceed in accordance with a single page of plans. It's numbered 04, initialed by the Chair, prepared by



Boyes-Watson Architects and dated 11/5/09.

All those in favor of the granting the Special Permit, say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Good luck.

(Alexander, Hughes, Sullivan, Scott, Heuer.)

(Discussion off the record.)

(8:20 p.m.)

(Sitting Members: Constantine Alexander, Tim Hughes, Brendan Sullivan, Thomas Scott, Tad Heuer.)

CONSTANTINE ALEXANDER: The Chair will call case No. 9870, 25 Madison Avenue.

Is there anyone here or wishing to be heard on that matter? Okay, you wanted to basically create a roof on a garage that's in excess of the requirements of our Zoning By-Law?

E. THOMAS FLYNN: Height.

CONSTANTINE ALEXANDER: On the height. Height requirements. Go ahead.

E. THOMAS FLYNN: Do I have to state my name?

CONSTANTINE ALEXANDER: Yes, please.

E. THOMAS FLYNN: E. Thomas Flynn. 25 Madison Avenue. Owner and petitioner.

JOHN WALKER: Life long resident.

E. THOMAS FLYNN: And a life long resident.

CONSTANTINE ALEXANDER: And good guy.

E. THOMAS FLYNN: Hope so.

CONSTANTINE ALEXANDER: Okay. You need a variance. You know you have to meet certain requirements and substantial hardship and what the substantial hardship is owing to and why there would be no impact on the integrity of the Zoning By-Laws. If you don't have the list, I'll walk you through it.

E. THOMAS FLYNN: No. The hardship is a number of things.

One, I was spent my life in the construction business and I'm retired now and I'm looking for someplace to -- a little shop to keep myself busy. And I've looked at the basement on the property. We have plenty of problems since the city keeps expanding and

eating up the wetland and now it's almost a yearly basis and the basement floods. So I looked at the garage which is a concrete block structure. It has a flat roof on it now and it's always had moisture problems. So I was wanting -- I talked with life long friend here and an architect, you know, how can I solve these moisture problems in the garage and get additional storage? There's no place to expand on the property out.

CONSTANTINE ALEXANDER: It's just not -- I'm sorry to interrupt you. This is not just to solve a leakage problem or it's also you're going to create additional storage?

E. THOMAS FLYNN: I'm creating 400 square feet of which I'm losing the use of like 1300 feet in the basement because of flooding. I can't store things in the basement if they're not hanging from the ceiling.

CONSTANTINE ALEXANDER: Okay. If you put the -- if we grant you relief to put the gabled roof, are you going to use the area under the gable for storage?

E. THOMAS FLYNN: Correct. I'm swapping from the basement to the gable. And taking some of the storage that's in the garage now and putting it in the gable so I can create a shop. Or a place to put a shop.

CONSTANTINE ALEXANDER: Once you put the gable up and the leakage in the basement ends, can you use the basement for storage?

E. THOMAS FLYNN: When's the leakage in the basement going to end?

JOHN WALKER: You think we're talking about the same building?

CONSTANTINE ALEXANDER: Yes.

JOHN WALKER: He basically has a lot 40 by 100 with a three decker on it. It's paved going most of it. There's a bank of

four garages across the back end. Three of them, which you could never get a car in from day one. The fourth garage you can.

There's no basement under the garage. He's talking about the basement in his house which is adequate for storage, but he has the storage that's in there. He hangs it from the rafters. And it's off the floor like four feet. The boilers are up on three courses of concrete block, and once a year there's two feet of water that comes in there. Which is new -- I'm also a life long resident, and the flooding gets increasingly worse. We're in the great swamp down by the Alewife and it's wet.

CONSTANTINE ALEXANDER: The reason I asked --

TIM HUGHES: Excuse me, could you identify yourself for the record?

JOHN WALKER: My name is John Walker. I live on Whitmore Avenue.

CONSTANTINE ALEXANDER: I'm trying to draw this -- some of this conversation out because we have to try to make it consistent with our decisions.

JOHN WALKER: I understand.

CONSTANTINE ALEXANDER: And not too long ago we turned down someone who wanted to build a roof on a garage above the height requirements for our Zoning By-Law and the reason they want to do that is for storage purposes and we turned them down. Now, I'm not going to -- I think you identified already a situation that distinguishes a situation. It's just he had a large house and no draining problems, and he wanted more storage and we were skeptical about it and we turned it down.

In your case you're saying you don't have a lot of storage in the house. It's a small house. And, two, you have a legitimate draining problem caused by the flat roof. The gabled roof will give you additional

storage area. It also addresses a structural problem.

JOHN WALKER: A moist temperature problem.

CONSTANTINE ALEXANDER: A structural problem that leads to moisture.

E. THOMAS FLYNN: And picks up to gutters on all sides from stopping moisture getting against the concrete block to wet the walls and again get moisture in.

BRENDAN SULLIVAN: What about a perimeter drain and a sum pump in the basement of the house?

E. THOMAS FLYNN: I have a sum pump in the basement. But by chance the sum pump doesn't go on, I'm in trouble. I'm risking it. I mean, this one -- I've been living in the house since 1954, and every year it gets worse. And every year we get more water. I mean, it's -- at some time the city has got to do something with that area. They're



allowing development --

CONSTANTINE ALEXANDER: It gets worse every year for 50 years you think your house would be under water by now.

E. THOMAS FLYNN: I'm telling you. I'm saying the amount of flooding. You know, '54 we got them -- during a hurricane you got water. Now you get it every heavy rainstorm and it doesn't have to flood the brook area. It comes in from underground. And it's not covered by flood insurance because it doesn't come in the windows. It just percolates up through the floor. And yes, you could put a perimeter drain and I have a sump in there now.

BRENDAN SULLIVAN: A perimeter drain with a sum pump would solve the problem.

E. THOMAS FLYNN: But I have a sum pump below the floor now. And if the sump pump for some reason fails, I take water. And even if the -- in the neighbor across the

street doesn't come on, mine fights to stay above the water. It gets to a head pressure.

CONSTANTINE ALEXANDER: How much storage space are you going to be creating? How much space of storage space?

E. THOMAS FLYNN: 400 square feet.

CONSTANTINE ALEXANDER: 400 square feet.

E. THOMAS FLYNN: And actually there's a little over five feet above the regulation.

CONSTANTINE ALEXANDER: The regulation is you can't be more than 15 feet high and you want to go 20 with your gable.

JOHN WALKER: Right. And most of the roof is below the 15. It's a gable. It's the top third.

CONSTANTINE ALEXANDER: Yes, I know that. That doesn't move me. Sure. You look at the highest point.

JOHN WALKER: He just wants to be

able to walk down the middle.

CONSTANTINE ALEXANDER: Is there anyone in the audience wishing to be heard in this matter?

(No response.)

CONSTANTINE ALEXANDER: No one in the audience wishes to be heard.

THOMAS SCOTT: How much area is lost in the basement the main house?

E. THOMAS FLYNN: 1300 square feet.

THOMAS SCOTT: 1300 square feet.

E. THOMAS FLYNN: The boilers are down there, but they're up on two-foot blocks. Any place else -- any other storage area used downstairs in the basement is hung from the rafters. It's storage area hung from the rafters.

CONSTANTINE ALEXANDER: And what's going to happen if we grant you relief? You're not going to hang anything from the rafters in the basement any longer?

E. THOMAS FLYNN: It will stay there, but I'm taking what's inside the garage putting it in the eve space of the garage and being able to put a small shop out there instead of putting a small shop in the basement where I could have a chance of flooding and losing any tools.

CONSTANTINE ALEXANDER: Small shop now?

E. THOMAS FLYNN: A table saw being in the building business.

JOHN WALKER: I'd also like to say something about the current conditions. That the view from the upper floors is not pretty looking down on the garages. And there's at least two, three families that look at it. There's a single-family on the other side. But he has his materials stored on the roof and it's an eye sore. And by putting it under the gable, it makes it look better. Also the building itself looks

better.

CONSTANTINE ALEXANDER: What I'm hearing, what I thought was starting off as a structural problem that created moisture --

E. THOMAS FLYNN: It is.

CONSTANTINE ALEXANDER: -- now I'm hearing about suddenly it's going to be storage and a workshop.

JOHN WALKER: There's no place on that site to put anything.

CONSTANTINE ALEXANDER: Well that may be true, that's the nature of the site. I mean, you know, it doesn't mean because you can't --

JOHN WALKER: It's overbuilt.

CONSTANTINE ALEXANDER: Yes, but it doesn't mean you have a right to build something too high under our Zoning By-Law just because you want to have a workshop and additional storage.

TIM HUGHES: Do we have a site plan?

CONSTANTINE ALEXANDER: Here it is.

THOMAS SCOTT: So this is the garage here?

E. THOMAS FLYNN: Yes. The four garage across the back. And there's no -- nothing abutting front and back the sides of the garages abutting them.

THOMAS SCOTT: And the neighbors have no issue with you going up?

E. THOMAS FLYNN: No.

THOMAS SCOTT: Do you have letters in the file?

E. THOMAS FLYNN: No, I don't have letters in the file. But I talked to the two side abutters that they approached me when they saw the advertisement, and they asked me if -- what I was doing. And they had no objection to it. I didn't ask for anyone to put any support letter.

TAD HEUER: What's in the garage

now?

E. THOMAS FLYNN: Tools. Sports stuff.

TAD HEUER: So it's 400 square feet now, the garage space?

E. THOMAS FLYNN: No.

JOHN WALKER: It's 2,540. So it's a --

TAD HEUER: (Inaudible.)

JOHN WALKER: Minus the thickness of the walls which is 70/50.

CONSTANTINE ALEXANDER: And that's used now for storage.

E. THOMAS FLYNN: For storage, yes.

JOHN WALKER: One is actually a working car bay.

CONSTANTINE ALEXANDER: If you want to use the storage area you're not using the garage to park the vehicles.

JOHN WALKER: One.

CONSTANTINE ALEXANDER: And you

park a vehicle now and you use the rest of the 750 square feet for storage.

E. THOMAS FLYNN: Uh-huh.

CONSTANTINE ALEXANDER: If we grant relief, you're going to still park one vehicle.

E. THOMAS FLYNN: Uh-huh.

CONSTANTINE ALEXANDER: And you're going to have 1150 square feet of storage. You're going to get an extra 400 feet from the gable, and you have the rest of the 750 that you have right now?

E. THOMAS FLYNN: Yes.

TAD HEUER: Is there any way you can go to the height that's allowed with a crawl space?

JOHN WALKER: We've tried. We tried everything. It's a concrete roof garage, concrete blocks on the side, steel frame inside supporting the concrete slab. And the top, the high point of the concrete



slab is nine foot, two off the ground. So that leaves us four foot, ten to the zoning maximum. And we could get by with seven foot. So we're off by two foot, six above the zoning requirement. And we were thinking how could we do this that we'd be able to walk and still have the space? And the only way that I can see is we can lower -- I have it at a 45 pitch. Naturally I was trying to get the maximum space inside which gives us a flat ceiling at seven, six if I think it's five feet. Yeah, it's about five feet wide. So if we lowered the pitch, it's a 12 pitch. So if we came down to probably ten, we could lower it two feet. So it's in violation now instead of 21, 6 height. So we're in violation five foot, six. If we came down two feet, lowered the pitch, we could have it down to 18, 6. So less of that percentage would be, you know, that percentage that's in violation, it's getting narrow and narrow.

And we would still have a flat ceiling on the inside that would be three feet shorter than the five feet. So we would have a two foot, two foot flat spot and the rest would be sloped. The main thing, you're able to go up an attic staircase and be able to walk up and down. If you have to walk with your head over, it's hard to undertaking it. And what he's faced with is doing the roof, has to be done over anyway, it leaks like a sieve, and the source of the most of the moisture that's in the building. So it's an opportunity for him to do it at this time not with the flat roof. Not to deal with it and just change it to a wood roof which would allow the ventilation to have soft vents, carry the damp moisture coming up through the ground and not through the building. Right now most of the water comes through the building but there is ground moisture, too.

TAD HEUER: So the roof has to come

off eventually?

JOHN WALKER: Not take the concrete off. The thing would fall down.

TAD HEUER: You would have to refinish is what you're saying?

JOHN WALKER: Yes.

CONSTANTINE ALEXANDER: What about Mr. Sullivan's comment that there's a perfectly suitable alternative that doesn't require a gabled roof to solve the moisture problem, the sump pump into a drain?

E. THOMAS FLYNN: You want to guarantee that I don't get flooded out if the pump doesn't quit?

CONSTANTINE ALEXANDER: What's the guarantee to you that the gable roof doesn't leak?

E. THOMAS FLYNN: The chances of the storms have been there.

CONSTANTINE ALEXANDER: Okay. If that's the only reason, maybe some day the

sump pump may not work.

JOHN WALKER: The other reasons are aesthetically it looks better. And as I exposed this chunk of the roof, you know, the roof just looks terrible.

CONSTANTINE ALEXANDER: Other comments from members of the Board?

TIM HUGHES: I mean, you can solve your moisture problem with a gable roof that doesn't, that doesn't go to 20 feet. It stays at 15 feet. It doesn't give you the storage you're looking for.

JOHN WALKER: No.

TIM HUGHES: But it does solve the moisture problem and the aesthetic problem. And the fact that you're storing ugly stuff on top of your garage now it really doesn't move me to give you an extra eight feet of roof to cover it up. You know? I mean, you could get rid of it, you know.

JOHN WALKER EFT: That's my opinion

looking out from his second floor.

TIM HUGHES: I saw the pictures. Undoubtedly it's ugly. But that's not, it's not a justification for us granting five extra feet of height to cover it up.

JOHN WALKER: The flat roof garages are ugly to begin with.

BRENDAN SULLIVAN: You could fill up the concrete roof and put something on the back.

TIM HUGHES: You could do a lot of things to solve the moisture problem, the water problem.

E. THOMAS FLYNN: Solves the garage -- the moisture problem.

TIM HUGHES: That's correct.

E. THOMAS FLYNN: Now what are you going to do? I got to put a basement --

BRENDAN SULLIVAN: Interior perimeter drain and basin and a sump pump.

E. THOMAS FLYNN: And I hope that it

works.

BRENDAN SULLIVAN: Yeah, yeah.

E. THOMAS FLYNN: Well....

BRENDAN SULLIVAN: This looks a lot more than just a garage.

CONSTANTINE ALEXANDER: Yes.

BRENDAN SULLIVAN: And a storage space.

E. THOMAS FLYNN: It was all -- I sat down with Ranjit.

BRENDAN SULLIVAN: I concur with Mr. Heuer's comments.

CONSTANTINE ALEXANDER: We ready to are a motion?

BRENDAN SULLIVAN: Yes.

CONSTANTINE ALEXANDER: The Chair moves to grant the petitioner a variance to erect a wood framed roof on top of an existing garage on the basis of the following findings:

That a literal enforcement of the

provisions of the order would involve a substantial hardship to the petitioner. The hardship being that the petitioner needs -- has an issue with regard to moisture from the existing roof, a flat roof, and also a desires additional working and storage space and can only get there by getting relief from our board.

That the hardship is owing to circumstances relating to the -- basically the shape of the structure. The fact that it is a flat roof which is -- needs to meet issues of leakage and therefore moisture in the basement of the main structure. And it is peculiar to your lot and not to the zoning district generally.

And the relief may be granted without substantial detriment to the public good or nullifying or substantially derogating from the intent or purpose of this ordinance.

That initially to be satisfied on the

basis that the relief being sought is required by a physical nature of the structure. That it is an area where the -- that the roof that is above the requirements for a Zoning By-Law is not necessarily visible to many of the citizens of the city. And, in fact, would increase the aesthetic appearance of the structure, which is one of the purposes of our Zoning By-Law.

This variance would be granted on the condition that the work proceed in accordance with the plans submitted by the petitioner, one page. I will initial it. And it's dated revised September 14, 2009.

All those in favor of granting the variance on the basis so moved, say "Aye."

(No response.)

CONSTANTINE ALEXANDER: No one says "Aye." The motion does not carry. The variance request is denied.



I suggest we make further findings. The finding being that the petitioner did not demonstrate substantial hardship to -- in fact, that the problems identified that would be solved by this structure can be done in other ways that would not require a variance from our Zoning By-Law, and that there are no special conditions involving the structures that don't affect the district generally. And granting relief would have detriment to the public good in that it would result in a building having a height more than one third required or required by our Zoning By-Law for accessory structures, and that this Board generally does not look in favor upon granting height variances.

All those in favor of those findings, say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor.

(Alexander, Hughes, Sullivan,  
Scott, Heuer.)

E. THOMAS FLYNN: Can I ask a  
question of the Board? Is a Special  
Permit -- is there a way to bring it into a  
Special Permit?

CONSTANTINE ALEXANDER: I don't  
think so.

E. THOMAS FLYNN: I just listened to  
some of the other cases.

TIM HUGHES: That's just the nature  
of relief being sought. Some of it is  
Special Permit and some of it is variance.  
And in this nature it would require  
variance.

CONSTANTINE ALEXANDER: Special  
Permit is a non-conforming structure and  
you're going to extend the non-conformance of  
not more than 25 percent. That the  
general -- that's like the case before.

E. THOMAS FLYNN: The skylight one?

CONSTANTINE ALEXANDER: They were going to put a skylight in a setback. It wasn't -- it didn't involve going in a 15-foot height requirement.

E. THOMAS FLYNN: No, but the garage is non-conforming. I was just wondering.

CONSTANTINE ALEXANDER: It doesn't, no. You can check with Sean who is more expert than any of the five of us.

E. THOMAS FLYNN: Thank you.

(8:40 p.m.)

(Sitting Members: Constantine Alexander, Tim Hughes, Brendan Sullivan, Thomas Scott, Tad Heuer.)

CONSTANTINE ALEXANDER: Thank you.

The Chair wants to bring to the attention of the Board we have a request for an extension of a variance that was granted on January 23, 2009 for a property 12 Douglas Street. We are in receipt of a letter from Franziska, F-r-a-n-z-i-s-k-a Amacher, A-m-a-c-h-e-r, the architect for the project.

The letter says: We would like to ask you for a continuance for the permit issued to 12 Douglas Street. We need more time to pull together the financing."

All those in favor of granting  
the -- how's the extension work, six more  
months?

SEAN O'GRADY: Yes, six more months.

CONSTANTINE ALEXANDER: It will be  
an extension for six more months.

All those in favor, say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in  
favor. Extension granted.

(Alexander, Hughes, Sullivan,  
Scott, Heuer.)

(Whereupon, at 8:40 p.m., the  
meeting adjourned.)

**C E R T I F I C A T E**

**COMMONWEALTH OF MASSACHUSETTS  
BRISTOL, SS.**

I, Catherine Lawson Zelinski, a  
Certified Shorthand Reporter, the  
undersigned Notary Public, certify that:

I am not related to any of the parties  
in this matter by blood or marriage and that  
I am in no way interested in the outcome of  
this matter.

I further certify that the testimony  
hereinbefore set forth is a true and accurate  
transcription of my stenographic notes to the  
best of my knowledge, skill and ability.

**IN WITNESS WHEREOF**, I have hereunto set  
my hand this 29th day of December 2009.

---

Catherine L. Zelinski  
Notary Public  
Certified Shorthand Reporter  
License No. 147703

My Commission Expires:  
April 23, 2015

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